CLARK COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT DEVELOPMENT SERVICES

STAFF ANALYSIS & RECOMMENDATION

HEARING DATE:

September 10, 2009

DEVELOPMENT NAME: MAYER ESTATES PLAT ALTERATION

CASE NUMBERS:

PLD2009-00015; HAB2009-0012; HAB2009-00040

TYPE III DEVELOPMENT & ENVIRONMENTAL REVIEW, STAFF REPORT & RECOMMENDATION



Form DS1402 PLD

Project Name: MAYER ESTATES PLAT ALTERATION

Case Number: PLD2009-00015; HAB2009-00040; HAB2009-

00012

Location: 1204, 1208, and 1306 NW 14th Street & 1310 and 1314 NW

115th Street

Request: The applicant is requesting a plat alteration/covenant

amendment to modify note #10 on the final plat for Mayer Estates relating to removal of trees within the riparian Habitat Conservation Zone/Tract "A". The subdivision is located

within an R1-7.5 zoning district.

Applicant: Ott Gaither

6807 NE 109th Street Vancouver, WA 98686

(360) 798-2282

gsconstruction@comcast.net

Contact Person: Harker Engineering, Inc.

1403 Washington Street Vancouver, WA 98660

(360) 699-2206

norm@harkerengineering.com

Property Owner: Ott Gaither

6807 NE 109th Street Vancouver, WA 98686

RECOMMENDATION
Approve Subject to Conditions

Team Leader's Initials: Date Issued: August 26, 2009

Public Hearing Date: September 10, 2009

County Review Staff:

	<u>Name</u>	Phone Ext.	E-mail Address
Planner:	Vicki Kirsher	4178	vicki.kirsher@clark.wa.gov
Engineer: (Trans. & Stormwater)	Ali Safayi	4102	ali.safayi@clark.wa.gov
Team Leader:	Travis Goddard	4180	travis.goddard@clark.wa.gov
Engineering Supervisor: (Trans. & Stormwater)	Sue Stepan P.E.	4102	sue.stepan@clark.wa.gov
Habitat Biologist:	Dave Howe	4598	david.howe@clark.wa.gov

Comp Plan Designation: UL (Urban Low Density Residential)

Parcel Number(s): Parcel serial numbers 188944-002, 188944-004,

188944-006, and 188944-008, 188944-010, 188944-012, 188944-014, 188944-016, 188944-018, 188944-020, located in the Northeast quarter of Section 33, Township 3 North, Range 1 East of the Willamette

Meridian.

Applicable Laws:

Clark County Code Sections: 40.200 (General Provisions); 40.220.010 (Single Family Residential Districts; R1-7.5); 40.440 (Habitat Conservation); 40.500.010 (Procedures); 40.510.030 (Type III Process); and 40.540.120 (Plat Alterations).

Neighborhood Association/Contact:

Felida Neighborhood Association Jamie Allen, President P.O. Box 61552 Vancouver, WA 98666 (360) 573-4030

E-mail: gaudeamus@earthlink.net

Vesting:

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report.

A pre-application conference on this matter was not held. The fully complete application was submitted on June 30, 2009 and determined to be fully complete on June 30, 2009. Given these facts the application is vested on June 30, 2009. There are no disputes regarding vesting.

Time Limits:

The application was determined to be fully complete on June 30, 2009 [Exhibit 8]. Therefore, the County Code requirement for issuing a decision within 92 days lapses on September 30, 2009. The State requirement for issuing a decision within 120 calendar days, lapses on October 28, 2009.

Public Notice:

Notice of application and public hearing was mailed to the applicant, the Felida Neighborhood Association and property owners within 300 feet of the site on July 14, 2009. One sign was posted on the subject property and two within the vicinity on August 25, 2009.

Public Comments:

A letter signed by several residents of Mayer Estates was received on August 6, 2009 [Exhibit 16]. The neighbors object to the applicant's habitat mitigation proposal to place downed woody debris from cut trees in the habitat area (Tract "A") behind their homes.

Staff Response

In order to alleviate the neighbors' concern, the applicant has identified an alternate plan for these cut trees [Exhibit 19]. It includes:

After the trees are felled or pulled up the stumps may be ground or buried on site. The limbs may be either chipped and used on site or hauled off to a recycling facility. The remaining tree trunks may be cut up on site and hauled off site for use as poles, firewood, or used at other mitigation sites for raptor posts or Downed Wood.

The County's Habitat Biologist has reviewed the proposed mitigation plan and determined that it can still comply with the Habitat Ordinance with the woody debris element removed (See Habitat Finding 5).

Project Overview

In 2004, the County approved a subdivision dividing approximately 10 acres into forty-two (42) lots [PLD2004-00004]. The final plat was recorded on August 11, 2006 [Book 311, Page 407].

As part of subdivision approval, a condition was imposed that all trees within the riparian HCZ's/Tract "A" are protected. A note (#10) to this effect was placed on the final plat. At this time, the applicant is asking to amend this plat note to read all trees within the riparian HCZ's/Tract "A" are protected and shall not be removed without county approval.

Staff Analysis

Major Issues:

Only the major issues, errors in the development proposal, or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this

proposed development comply with the applicable code requirements and, therefore, are not discussed below.

Finding 1 – Plat Alteration Process

This application was processed as set forth in CCC 40.540.120(B)(2). These provisions specify that preliminary approval of a plat alteration will be processed as a Type II application with an optional Type III process if a public hearing is requested. In this case, no public hearing was requested.

A conservation covenant was recorded with the final plat for Mayer Estates. In order for the plat alteration to be approved, this covenant must be also be modified. CCC 40.440.020(A)(6)(f) of the Habitat Conservation Ordinance states:

An application for [covenant alteration] of a Type III decision shall be subject to a Type III review process if it is not subject to Type I or II review.

Type I or II reviews are generally required for covenant alterations that enhance habitat functions or are not of broad public interest. In this case, the Habitat Permit for Mayer Estates Subdivision was appealed by neighbors to the Board of County Commissioners (BOCC) in 2004. Therefore, staff finds this proposal to be of broad public interest. As a result, the conservation covenant modification requires a Type III hearing.

Finding 2 – Plat Alteration Criteria

CCC 40.540.120 establishes procedures and criteria for the alteration of recorded plats to ensure consistency with state law [RCW 58.17.215 and 58.17.217]. In order to be approved, a plat alteration must meet the following criteria:

- a. The plat alteration is within the public interest; and
- b. The approval criteria in Section 40.540.040(D), as applicable to the proposed plat alteration, are met; and
- c. The approval of the plat alteration will not result in violation of any requirements of the original approval unless conditions necessitating such requirements have changed since the original plat was recorded.

Finding 3 – Public Interest

The intent of plat note #10 is for the protection of trees within the riparian Habitat Conservation Zone (HCZ). Once the final plat was recorded, it was discovered that "there are several trees on each lot that will not likely survive home construction because of the tight building envelope, or if they do survive, are likely to become a future safety issue." Specifically, the construction process on Lots 4 and 7 "will most likely, directly or indirectly, damage the root zones of the trees proposed for removal and replacement. This damage will affect the viability of the trees, and eventually lead to their instability." The applicant has proposed a mitigation plan for trees being removed that he believes will avoid a hazardous tree situation, sustain a viable tree canopy, and facilitate a safe building environment. Staff has reviewed said plan and concurs that the applicant's mitigation strategy adequately addresses construction

impacts (See Habitat Finding 3). As a result, it is concluded that the plat alteration is within the public interest.

Finding 4 – Subdivision Review Criteria

CCC 40.540.040(D) contains criteria for reviewing preliminary subdivision applications. In a decision rendered on May 18, 2004 for Mayer Estates Subdivision [PLD2004-00004], it was determined that division of this 10± acres into forty-two (42) single family residential lots met applicable criteria for dividing property. The proposed plat alteration does not change this situation. Therefore, this criterion is satisfied.

Finding 5 – Original Plat Approval

As previously noted, note #10 was placed on the face of the plat to protect trees within the riparian HCZ. Although trees will be removed, the applicant has submitted a plan to mitigate for this removal through a combination of on-site planting and off-site acquisition of functionally equivalent habitat (See Habitat Finding 3). Therefore, the requested plat alteration will not violate requirements of the original approval. A condition will be imposed, however, that nothing in this decision will modify the original decision in any way other than as discussed in this staff report (See Condition D-1-c).

Finding 6 - Final Approval

CCC 40.540.120(B)(3) requires that "within five (5) years of the date of preliminary approval of the vacation or alteration, the applicant shall submit for final plat approval through the final plat process of CCC 40.540.070. If the nature of the plat alteration is minor, the review authority may set appropriate conditions and processes for final review and recording of the alteration at the time of preliminary approval."

This proposed plat alteration does not reconfigure existing parcels and, as a result, is considered a minor alteration. Requiring the applicant to proceed through the final platting process as if for a new land division would serve no purpose. An appropriate process for final review is for the applicant to submit a declaration, signed by owners of Lot 4, Lot 7 and Tract "A in a form substantially the same as Exhibit 14 (See Condition D-1). Staff will then process the document to obtain the necessary county signatures).

Conclusion (Land Use): Staff finds the proposed plat alteration, subject to conditions identified above, meets requirements of the Clark County Code.

HABITAT:

Finding 1 – Applicant's Request

Mayer Estates Subdivision was platted with a note regarding preservation of the riparian Habitat Conservation Zones (HCZ's). Plat note 10 on the recorded plat states:

All trees within the riparian HCZ's/Tract "A" are protected.

The riparian HCZ in this case is defined as an area 150 feet horizontally outward from the ordinary high water mark of the creek. This measurement extends beyond the

boundaries of Tract 'A' on the approved plat [Exhibit 18]. On Lots 4 and 7, there are nine (9) total protected trees within the riparian HCZ [See Exhibit 13]. The applicant proposes to amend the plat note to accommodate some form of building on these two lots. The modified note will read:

All trees within the riparian HCZ's/Tract "A" are protected <u>and shall not be</u> removed without <u>county approval</u>. (Emphasis added)

In conjunction with this plat alteration/covenant modification request, the applicant has also applied for two separate Habitat Permits (HAB2009-00012 and HAB2009-00040) to allow removal of the specified trees on Lot 4 and Lot 7. If this plat alteration/covenant modification is approved, these two Habitat Permits will constitute the county approval necessary to remove protected trees as specified in the new plat note language.

Finding 2 – Reasonable Use

The Habitat Conservation Ordinance contains a reasonable use assurance for construction on legal lots. CCC 40.440.020(B)(1)(a) specifies the Ordinance "shall not be used to prohibit placement of a single-family residence and residential accessory structures on an otherwise legally buildable lot of record." In viewing the existing lot configuration in relation to utilities, habitat/wetland areas, and property line setbacks, the applicant has no choice but to build the homes in the proposed locations [See Exhibit 13]. The applicant has exhausted all avoidance alternatives. The maximum allowed property line setback variance would still result in significant damage to tree root systems; thereby creating a future safety hazard. Additionally, reducing the square footage of the homes below 2,000 square feet would violate CC&R's for this subdivision.

Finding 3 – Mitigation

In accordance with CCC 40.440.020(A)(2)(a), the applicant is required to "substantially maintain the level of habitat functions and values" that are currently present on the site. The applicant proposes to mitigate for the tree removal through a combination of on-site planting and off-site acquisition of functionally equivalent habitat [See Exhibits 12 and 13]. The proposed on-site mitigation calls for the planting of Pacific madrone trees (Arbutus menziesii). The off-site mitigation calls for the preservation of 23 trees outside the regulated habitat area that are functionally equivalent. Staff finds the mitigation strategy [Exhibits 12, 13, and 17] adequately addresses construction impacts, provided the conditions D-2, D-3, D-4, E-1 and H-1 are met.

Finding 4 – Off-site Mitigation

CCC 40.440.020(3)(d)(18) of the Habitat Ordinance allows for off-site mitigation, subject to certain geographic, functional, and procedural limitations. To summarize this code section, off-site mitigation needs to be used when no on-site alternatives exist, the mitigation site must be within the same watershed as the impact, be reviewed by the

¹ Exhibit 18 shows the extent of the 150-foot measurement and the location of protected trees when the preliminary Mayer Estates Subdivision was reviewed in 2004. Lot numbering has changed and lot lines have shifted slightly since then.

² There can be situations where this code criterion cannot be met due to the reasonable use provisions in the code, yet the application must still be approved. However, in this case, staff finds this application can meet this requirement.

Washington Department of Fish and Wildlife (WDF&W), and be functionally equivalent to what is being lost. The proposed off-site preservation³ is within the same watershed (Salmon Creek) as the impact area, was approved through consultation with the WDF&W, and is functionally equivalent in both size and condition to what is being lost. Additionally, no on-site mitigation alternatives exist that would adequately replace the disrupted habitat functions.

The proposed off-site habitat preservation site is in an area not regulated by the Habitat Ordinance, yet is functionally connected to the regulated riparian HCZ of Salmon Creek. The applicant proposes to protect 23 off-site trees as compensation for the removal of 9 within the construction area. The rationale for going beyond a 1:1 ratio is related to the proximity of the off-site trees to an existing rural major collector roadway. Staff finds this off-site mitigation strategy complies with the applicable code criteria, provided a Habitat Conservation Covenant is recorded protecting this area (See Condition D-5).

Finding 5 – Neighborhood Concerns

Exhibit 16 is a signed petition from the neighbors requesting the cut trees not be placed in the open space tract for mitigation purposes. Given strength of the proposed mitigation plan, the Habitat Ordinance will not require placement of cut wood within the habitat area. Staff finds the woody debris element can be deleted from the proposed mitigation plan and still comply with the Habitat Ordinance (See Condition D-4).

Conclusion (Habitat): Staff finds the proposal can comply with the Habitat Conservation Ordinance, subject to conditions of approval.

RECOMMENDATION

Based upon the proposed mitigation plan [Exhibits 12 and 13], the plant maintenance and monitoring provisions of Exhibit 17 and the findings and conclusions stated above, staff recommends the Hearings Examiner **APPROVE** this request, subject to the understanding that the applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

Conditions of Approval

A Final Construction Plan Review for Land Division Review & Approval Authority: Development Engineering

Prior to construction, a Final Construction shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

A-1 None

³ Preservation is one form of accepted mitigation. Other forms can be enhancement, creation, or restoration.

B | Prior to Construction of Development

Review & Approval Authority: Development Inspection

Prior to construction, the following conditions shall be met:

B-1 None

C Provisional Acceptance of Development

Review & Approval Authority: Development Inspection

Prior to provisional acceptance of development improvements, construction shall be completed consistent with the approved final construction/land division plan and the following conditions of approval:

C-1 None

D | Final Plat Review & Recording

Review & Approval Authority: Development Engineering

Prior to final plat approval and recording, the following conditions shall be met:

- **D-1** The applicant shall submit for final plat through the following alternative process (See Land Use Finding 6):
 - a. A signed, notarized declaration with attachments shall be submitted for review and shall be in substantial conformity with the attached exhibits.
 - **b.** The declaration shall be recorded with the Clark County Auditor. A copy of the recorded document shall be submitted to the Department of Community Development within 5 years of preliminary plat alteration approval.
 - c. Said declaration shall clearly indicate that the original subdivision is only amended as described in this report. All other aspects of the final plat are unaffected. (See Land Use Finding 5)
- **D-2** The applicant shall record a revised Habitat Conservation Covenant and plat note for the Mayer Estates site. The Declaration Amending Plat (Condition D-1) will satisfy these requirements.
- **D-3** The Declaration Amending Plat (Condition D-1) shall include language in the stating "tree protection fencing shall be installed prior to any clearing or groundbreaking activities on Lots 4 and 7. Trees shall be felled and removed in a manner that minimizes damage to adjacent protected trees." (See Habitat Finding 3)
- **D-4** Prior to recordation of the Declaration Amending Plat (Condition D-1), the applicant shall implement Exhibits 12, 13, and the plant maintenance and monitoring provisions of Exhibit 17 (excluding large-woody debris elements of the mitigation plan). (See Habitat Findings 3 and 5)

- **D-5** Prior to recordation of the Declaration Amending Plat (Condition D-1), the applicant shall record a Habitat Conservation Covenant protecting the off-site preservation area. (Habitat Finding 4)
- **D-6** Prior to recordation of the Declaration Amending Plat (Condition D-1), the applicant shall pay all mitigation monitoring inspection fees.

E Building Permits

Review & Approval Authority: Customer Service

Prior to issuance of a building permit, the following conditions shall be met:

- E-1 Tree protection fencing shall be installed prior to any clearing or groundbreaking activities on Lot 4 and Lot 7. Trees shall be felled and removed in a manner that minimizes damage to adjacent protected trees. (See Habitat Finding 3)
- **E-2** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.

F Occupancy Permits

Review & Approval Authority: Building

Prior to issuance of an occupancy permit, the following conditions shall be met:

- F-1 None
- G Development Review Timelines & Advisory Information Review & Approval Authority: None Advisory to Applicant
- G-1 None
- H Post Development Requirements
 Review & Approval Authority: As specified below
- H-1 Habitat The applicant shall monitor all habitat mitigation planting areas for a period of three (3) years and submit monitoring reports to the Planning Director. All photo and monitoring data shall be collected during the most recent growing season prior to report submittal. (See Habitat Finding 4)

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a "hearing extension" or "open record" and shall pay the associated fee.

HEARING EXAMINER DECISION AND APPEAL PROCESS

This report to the Hearing Examiner is a recommendation from the Development Services Division of Clark County, Washington.

The Examiner may adopt, modify or reject this recommendation. The Examiner will render a decision within 14 calendar days of closing the public hearing. The County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

An **appeal** of any aspect of the Hearing Examiner's decision, <u>except</u> the SEPA determination (i.e., procedural issues), may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, Public Service Center, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

- · Case number designated by the County;
- Name of the applicant;
- · Name of each petitioner;
- Signature of each petitioner or his or her duly authorized representative;
- A statement showing the following:
 - That each petitioner is entitled to file the appeal as an interested party in accordance with CCC 40.510.030(H);
 - The specific aspect(s) of the decision being appealed;
 - o The reasons why each aspect is in error as a matter of fact or law;
 - o The evidence relied on to prove the error; and,
- The appeal fee of \$716.

The fee shall be refunded if the appeal is withdrawn in writing by the petitioner at least 15 calendar days before the public meeting to consider the appeal.

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

- Fourteen (14) calendar days for the appellant's initial comments;
- Twenty-eight (28) calendar days for all responding comments; and,
- Thirty-five (35) calendar days for appellant reply comments, which are limited to the issues raised in the respondent's comments.

Written comments shall be limited to arguments asserting error in or support of the examiner decision based upon the evidence presented to the examiner.

Unless otherwise determined by the Board for a specific appeal, the Board shall consider appeals once a month, on a reoccurring day of each month. The day of the month on which appeals are considered shall be consistent from month to month as determined by Board.

The Board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the Board of Commissioners. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision.

Attachments:

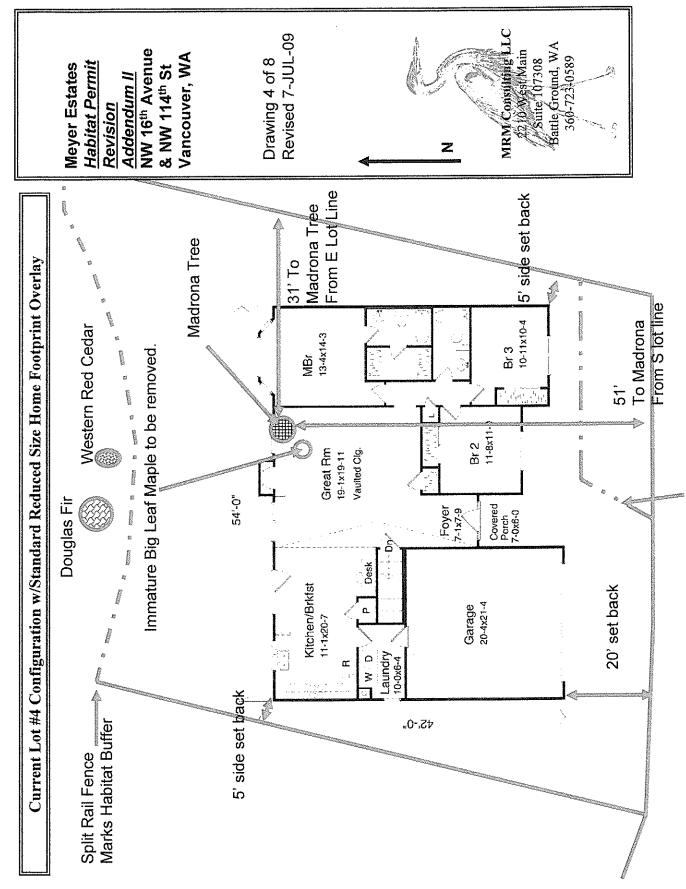
- Map of property owners receiving notice
- Lot 4 Map from Habitat Addendum II
- Lot 7 Map from Habitat Addendum II
- Exhibit List

Ninety percent (90%) of the fee will be refunded if the appeal is withdrawn in writing by the petitioner at least 15 calendar days before the public meeting to consider the appeal.

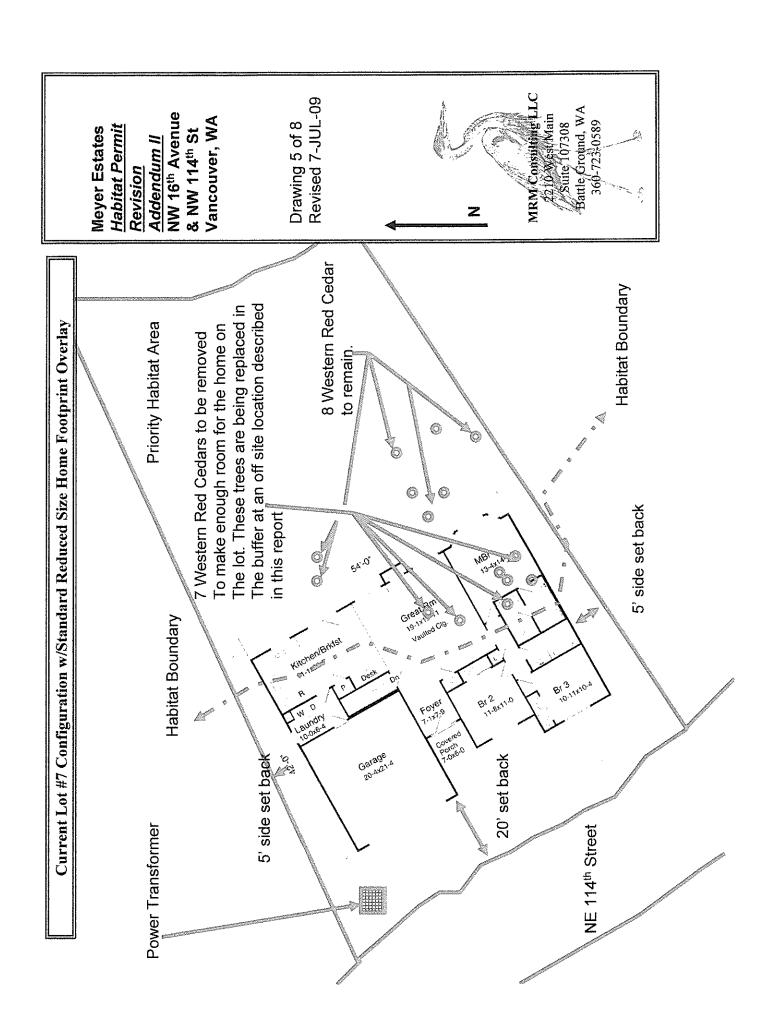
A copy of the approved preliminary plan, SEPA Checklist and Clark County Code are available for review at:

Public Service Center
Community Development Department
1300 Franklin Street
P.O. Box 9810
Vancouver, WA 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011

A copy of the Clark County Code is also available on our Web Page at: Web Page at: http://www.clark.wa.gov



private storm water easement across from of lot



HEARING EXAMINER EXHIBITS



Project Name: MAYER ESTATES PLAT ALTERATION

Case Number: PLD2009-00015; HAB2009-00040; HAB2009-00012

Hearing Date: September 10, 2009

nearing Da	ite.	September 10, 2009		
EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION	
1		CC Development Services	Aerial Map	
2		CC Development Services	Vicinity Map	
3		CC Development Services	Zoning Map	
4		CC Development Services	Comprehensive Plan Map	
5	4/2/09	Applicant: Gaither LLC	Full Size Plan	
6	4/2/09	Applicant: Gaither LLC	Application Packet: Application Form, Pre- App Report, GIS Packet, Narrative, Approved Plats, Existing Covenants, Proposed Revised Map, Existing Conditions, Documentation of other Interest	
7	4/23/09	CC Development Services	Development Review NOT Fully Complete Determination	
8	6/20/09	CC Development Services	Development Review Fully Complete Determination	
9	7/13/09	CC Development Services	Early Issues Email to Applicant	
10	7/14/09	CC Development Services	Notice of Type II Development Review & Public Hearing	
11	7/14/09	CC Development Services	Affidavit of Mailing Public Notice	
12	7/22/09	MRM Consulting on Behalf of the Applicant	Habitat Mitigation Addendum	
13	7/22/09	MRM Consulting on Behalf of the Applicant	Maps for Habitat Mitigation Addendum	
14	7/22/09	Applicant: Gaither LLC	Declaration Amending Short Plat	
15	7/24/09	Applicant: Gaither LLC	Narrative Addendum	
16	8/5/09	Letter Signed by Several Neighbors	Letter in Opposition to Mitigation Strategy	

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION	
17	12/19/08	MRM Consulting on Behalf of Applicant	Original Habitat Mitigation Plan	
18	8/7/09	CC Development Services	Protected Tree Location as Approved in PLD2004-00004	
19	8/7/09	MRM Consulting on Behalf of Applicant	Mitigation Alternative in Response to Letter from Neighbors	
20	8/11/09	CC Development Services	Notice of Public Hearing for Sept 10, 2009	
21	8/20/09	Applicant: Gaither LLC	Affidavit of Posting Land Use Sign	
22	8/26/09	CC Develoment Services	Staff Report written by Vicki Kirsher	

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division 1300 Franklin Street Vancouver, WA 98666-9810